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## OLR Bill Analysis

**sSB 89 (File 191, as amended by Senate "C")\***

### ***AN ACT ESTABLISHING A MATTRESS STEWARDSHIP PROGRAM.***

#### **SUMMARY:**

This bill establishes a "mattress stewardship program" for managing discarded mattresses. It requires mattress producers to manage the program by establishing and joining a nonprofit mattress recycling council. The council must develop a plan to, among other things, minimize public sector involvement in managing discarded mattresses. The plan must be submitted to the Department of Energy and Environmental Protection (DEEP) for approval. The program is funded through a uniform fee on all mattresses sold in Connecticut.

The bill allows the DEEP commissioner to civilly enforce the program's requirements, establishes reporting requirements, and provides immunity under certain circumstances to producers and the council from claims of antitrust violations. It allows the council to (1) conduct research related to improving efficiency and (2) collaborate with another state with a mattress recycling program under certain circumstances.

Under the bill, recycling is the program's preferred disposal method if it is technologically feasible and economically practical.

\*Senate Amendment "C", among other things, (1) replaces the mattress stewardship representative organization with a council and allows retailers to be council members; (2) finances the program through a uniform fee on purchased mattresses instead of a producer market share mechanism; (3) changes some of the program and plan requirements; (4) expands the auditor's role; (5) adds a financial reserve requirement; (6) requires the plan to be approved by the Environment Committee; (7) requires the council to update

performance goals; (8) extends the time to implement the program after plan approval; (9) enables the attorney general to sue in Superior Court for violations; and (10) allows the council to conduct certain research and collaborate with other states. It removes (1) a retailer prohibition on selling mattresses from noncompliant manufacturers, (2) a requirement that DEEP post the names of participating producers on its website, (3) an exemption for certain small producers, and (4) provisions allowing retailers to provide consumer information and serve as collection points.

EFFECTIVE DATE: October 1, 2012; except the covered entity fee provision is effective July 1, 2013.

## **MATTRESS STEWARDSHIP PROGRAM**

### ***Mattress Producers***

The bill applies to “producers” (manufacturers or renovators) of mattresses sold, offered for sale, or distributed in Connecticut under the manufacturer’s name or brand. It includes (1) the owner of a trademark or brand under which a mattress is sold, offered for sale, or distributed in the state and (2) any person who imports a mattress into the United States that is sold or offered for sale in Connecticut and manufactured or renovated by a person without a United States presence. The bill defines “renovator” as a person who alters discarded mattresses for resale by replacing the ticking or filling, adding filling, rebuilding a mattress, or replacing components. A “brand” is a name, symbol, word, or mark that attributes a mattress to its producer.

Under the bill, a “mattress” is any resilient material or combination of materials enclosed by a “ticking” (outermost fabric or material layer) and intended or promoted for sleeping upon. It includes (1) ticking-covered structures used to support the mattress composed of a constructed frame, foam, or box spring (a “foundation”) and (2) any renovation. But it does not include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, and certain water beds, air mattresses, and upholstered furniture.

A “sale” is the transfer of title of a mattress for consideration including through a sales outlet, catalog, website, or similar electronic means.

### ***Program Purposes and Establishment***

By July 1, 2013, the bill requires (1) producers to create and join the organization to design, submit, and implement the mattress stewardship program (the “mattress recycling council”) and (2) the mattress recycling council to submit a plan for establishing a statewide mattress stewardship program to the commissioner for approval. The bill authorizes any retailer to be a member of the council.

The bill requires the council to be a nonprofit. Its fee structure must cover and not exceed the costs of (1) developing the plan, (2) operating the program, and (3) maintaining a sufficient financial reserve to operate the program in a fiscally prudent and responsible manner over a multi-year period.

The mattress stewardship program must, to the extent technologically feasible and economically practical, (1) minimize public sector involvement in managing discarded mattresses; (2) provide free, convenient, and accessible statewide collection of such mattresses; (3) provide council-financed management for them; (4) include a fee sufficient to cover the program’s operating costs; and (5) provide suitable storage containers at permitted municipal transfer stations for segregated, discarded mattresses at no cost if the transfer station (a) makes space available for the containers and (b) does not impose a fee for placing the container on its premises.

Under the bill, a “discarded mattress” is a mattress a consumer discarded or intends to discard or that is abandoned.

### ***Plan Components***

The council’s plan must:

1. identify each participating producer,
2. describe the program’s fee structure (see below),

3. establish performance goals for the first two years of the program,
4. identify proposed facilities to be used by the program,
5. detail the program's promotion of recycling discarded mattresses, and
6. describe the public education program.

Under the bill, a "performance goal" is a council-proposed metric approved by the commissioner to annually measure the program's performance. It must consider technical and economic feasibility of (1) achieving continuous and meaningful improvement in the state's mattress recycling rate and (2) any other specified goal.

#### ***Plan Approval and Implementation***

The bill requires the DEEP commissioner to approve the plan if it meets the bill's program and plan requirements. The DEEP commissioner must determine whether to approve the plan within 90 days after its submission. He must post the plan on DEEP's website and solicit public comments before deciding whether to approve it. The bill specifies that the solicitation is not conducted under the Uniform Administrative Procedure Act.

If the plan is not approved because it does not meet the bill's program and plan requirements, the DEEP commissioner must provide the council with a notice of determination describing the reasons for disapproval. The council must revise and resubmit the plan within 45 days of receiving the disapproval notice. The commissioner must review and either approve or disapprove the revised plan within 45 days of receiving it. A revised plan cannot be resubmitted for approval more than twice. The bill requires the DEEP commissioner to modify and approve a submitted plan if the council fails to provide an acceptable plan. After approving the plan, the commissioner must submit it to the Environment Committee for approval.

The bill requires the council to implement the mattress stewardship

program within 120 days after plan approval.

### ***Changes to the Plan***

The bill requires the council to notify the DEEP commissioner of (1) proposed substantial changes to the program, such as changes to the (a) fee structure, (b) processing facilities used for discarded mattresses, and (c) system for collecting mattresses and (2) any other program changes, without resubmitting the plan for approval, such as changes in council membership, when they occur on an ongoing basis. The bill does not specify what changes would require resubmission of a plan for approval.

By October 1, 2015, the council must submit to the commissioner updated performance goals based on its experience with the program during its first two years.

### ***Funding***

By July 1, 2013 and biennially thereafter, the council must propose a uniform fee for all mattresses sold in Connecticut. The bill authorizes the council to propose a fee change more often than biennially if it determines the change is necessary to avoid a funding shortfall or surplus.

The bill requires an auditor to review a proposed fee to assure that it does not exceed the costs of the program and that the fee maintains sufficient financial reserves to operate the program in a fiscally prudent and responsible manner over a multi-year period. It requires the council to select the auditor. The auditor must recommend a mattress fee amount to DEEP for DEEP's approval. The cost of the auditor's work is funded by the fee.

Beginning on the program's implementation date, the fee must be added to the cost of all mattresses sold by producers to retailers and distributors in Connecticut. Each retailer and distributor must add the fee amount to the purchase price of all mattresses sold in the state. The bill authorizes the council to establish an alternative, practicable way of collecting or remitting the fee if DEEP approves.

### ***Program Audit***

Two years after program implementation, the council must have a program audit conducted by the auditor. The audit must (1) review the accuracy of the council's program data and (2) provide any other information requested by the commissioner. The council must pay for the audit through the program fee. The bill allows the commissioner to request an audit no more than once per year.

The bill requires the council to maintain all program records for at least three years.

### ***Research***

The bill authorizes the council to conduct research on improving the efficiency of used mattress collection, dismantling, and recycling operations. Such research includes pilot programs to test new processes, methods, or equipment. The bill allows research costs to be included in calculating the fee amount.

### **MATTRESS COLLECTION FEES**

The bill prohibits any person in the state with a discarded mattress (a "covered entity") participating in the program from charging for receipt of mattresses generated in the state but allows them to charge a fee for collecting mattresses. It allows them to restrict mattress acceptance by number, source, or physical condition.

### **CIVIL PENALTIES**

The bill authorizes the commissioner to civilly enforce the program's requirements.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if he believes that a person has engaged in or is about to engage in any act, practice, or omission that will violate the program's requirements. It allows the court to issue a permanent or temporary injunction, restraining order, or other appropriate order if the commissioner shows that the person has engaged in or is about to engage in the act, practice, or omission. The order may require remedial measures and direct compliance.

The bill requires that such actions by the attorney general take precedence over other actions in the order of trial.

### **LIABILITY PROTECTION**

Under the bill, to the extent a producer or the council is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

### **REPORTS**

Annually by October 15, the council must submit a report to the commissioner on a form he prescribes. DEEP must post the report on its website. The report must include the:

1. tonnage of mattresses collected from municipal transfer stations, retailers, and all others;
2. tonnage of mattresses diverted for recycling;
3. weight of mattresses recycled, by the weight of each type of component sold as a commodity to secondary markets; and
4. weight of mattresses or their parts sent for disposal at waste-to-energy facilities, landfills, and other facilities.

It must also include (1) public education materials and methods used to support the program, (2) an evaluation of methods and processes used to achieve program performance goals, (3) recommendations for program changes, and (4) any other relevant public information the commissioner requests, but not proprietary information or a trade or business secret.

Within three years of the plan's approval, the commissioner must submit a report to the Environment Committee that evaluates the program. The report must also establish goals for the (1) amount of discarded mattresses managed by the program and (2) recycling of such mattresses, and must consider technical and economic feasibility.

### **INTERSTATE COLLABORATION**

The bill allows the council to collaborate with another state that implements a mattress recycling program to conserve efforts and resources but the collaboration must be consistent with the bill's requirements.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 22      Nay 7      (03/14/2012)